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IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE NINTH CIRCUIT.

Frank C. Robertson, Plaintiff in Error,

vs.

Blaine County, Defendant in Error.

ARGUMENT OF DEFENDANT IN ERROR.

LYTTLETON PRICE,
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Plaintiff brings this action to recover from defendant a sum of money alleged to be due him on certain Alturas county courthouse bonds, set up in his complaint, which fell due November 1st, 1891. The action is laid on these bonds and some unpaid interest coupons thereon, pleaded together with an Act of the Idaho Legislature of 1895, page 31, and especially sections seven and eight of it, which are as follows:

7. "All valid and legal indebtedness of Alturas * * * shall be assumed and paid by the county of Blaine."

8. " * * * all rights of action now existing in favor of or against said Alturas * * * may be maintained in favor of or against Blaine county."

The manifest intent of these sections is to substitute Blaine for Alturas, without change of existing conditions or provisions.

Plaintiff also sets up as a part of his cause of action, for the purpose of avoiding the operation of the statute of limitations, facts showing that both Alturas before its dissolution and Blaine since its creation, have failed to provide by taxation or otherwise, any funds to pay these bonds; and that there is and has been no money in the treasuries of either county which could be used to pay them, and that the treasurers of both counties have refused to pay them for want of funds.

Plaintiff also contends that the Act referred to gives him a cause of action against Blaine county, in some sense independent of the contract of the Alturas bonds, for the amount of them with accrued interest thereon, as a debt laid upon Blaine county by the Legislature.

These different contentions are directly antagonistic; for if his action is on the bonds it cannot be at the same time an action on an obligation created by the statute, and *vice versa*. Neither can it be upon both, for he claims and declares upon only one cause of action. The last paragraph in the amended complaint—before the prayer—makes it clear that he intends to charge the indebtedness "*originally created by the bonds * * * subsequently imposed upon the defendant county by thesaid Act.*"

It is then the "valid and legal indebtedness of Alturas," as provided in section 7, that he is suing for; an indebtedness created, not by statute at all, but by the contract of the bonds. For under the terms of the section Blaine is not re-

quired to assume or pay anything else. Besides he has no right of action against Blaine except as he gets it from the statute, which, in section 8, permits him to maintain against Blaine such rights of action as then existed against Alturas, and no other. He has, then, the same cause of action—the very same obligation—and is attempting to enforce it precisely as if he were suing Alturas, instead of its successor, Blaine.

If this is not true, then he alleges no cause of action at all, for otherwise there is no liability upon the defendant.

To this complaint Blaine county demurs on two grounds:

That it fails to state a cause of action; and that it appears therefrom that its alleged cause of action is barred by the provisions of sec. 4052, statutes of Idaho—the statute of limitations.

FIRST. ON THE GENERAL DEMURRER.

Whether this be called an action for debt, or given any name within the classifications of common law actions, *the cause of action* is the bonds and the assumption of liability by defendant for their payment according to their terms. Otherwise there is no cause of action pleaded, and plaintiff is therefore forced to the position of declaring upon it in order that he may state a cause of action at all. The general demurrer is aimed against all other positions.

Plaintiff declares "this is no suit upon contract made with defendant." He is right. It is nothing else but a suit "upon contract" *made*

with Alturas. If it is anything else then there is in it no cause of action stated, because the statute under which he has his right of action gives him no kind nor right of action except for a "valid, legal indebtedness of Alturas." And as valid, legal indebtedness of Alturas he has his action, or he has none at all. He has no action against Blaine for anything else, under the statute or otherwise. If he departs from the contract with Alturas he is lost, for there, only, is the thing which makes Blaine liable to him.

Plaintiff may call this an action "for debt," or on "a specialty," or what you will. To state a cause of action at all he must plead—and he has so pleaded—the bonds and the statute *together*. Neither, pleaded alone, would suffice him. The bonds are the indebtedness which Blaine assumed, and the statute is the right to sue.

Plaintiff concedes that the Legislature could not arbitrarily fix a debt upon Blaine county unless such debt be founded upon some obligation falling upon its citizens within the contemplation of the Idaho constitution. It is equally true that the Legislature in imposing this debt upon Blaine could only require it, as it did in terms, to assume and pay the obligation which existed by reason of Alturas county's contract. That it required it to fulfill the obligation of Alturas on this contract.

Plaintiff cites a note on page 76 of Angell on Limitations, where it is said that when a statute provides for the payment of a sum of

money but does not mention any mode of recovering it, the action "lies upon the statute." This is where the obligation is created by the statute. In this case only the right of action is given by statute. The cause of action is in existence before The cause of action is not created by the statute. The right given to sue depends for its existence upon the existence of legal indebtedness—a cause of action—theretofore owing. It expressly recognizes the obligation as one already subsisting. By section 8 he has his action to recover upon it; it, at the same time limits such right of action to pre-existing causes of action. Its purport and effect are just the same as if it had specified these bonds in terms and said: "Whereas, Alturas is indebted to plaintiff on its courthouse bonds, Blaine shall pay them; and if it fail to do so according to their terms, the holder of them may sue Blaine upon them. It said, your "right of action *now existing* * * * against said Alturas * * * county may be maintained * * * against Blaine county." What right of action? The right of action plaintiff then had against Alturas. It does not create any new action nor obligation, nor cause of action. It expressly preserves and continues those "now existing," without enlargement, and confines plaintiff's rights to such as he then and theretofore enjoyed; it also prescribes plaintiff's "mode of recovery," and limits him to it. The only right of action then existing was upon the bonds, and there can be no other now. These two sections are in perfect harmony, and construed together express the legis-

lative intent. Without section 8 plaintiff might possibly have had another remedy, but, with it, the mode of recovery, the right of action, is fixed, and limited to the mode and right prescribed.

The general demurrer, therefore, confines plaintiff to the position that his action is upon the bonds, thus leaving the field clear for the discussion of the application of the statute of limitations, undisturbed by complications which arise from the claim that plaintiff's right to recover rests upon other matters and things set up in addition to the bonds.

SECOND. AS TO THE STATUTE OF LIMITATIONS.

On the face of the bonds alone, it is clear that the statute has run. The right of action accrued upon them more than six years before this suit was commenced. In Idaho the statutory period is five years on this class. So, if the action is not barred, it is because of the legal effect of the statute pleaded or by reason of the fact that funds were not provided for the payment of the bonds.

Plaintiff falls into the error of thinking that because the statute permits him to bring this action against Blaine county, his action is "founded upon the statute." He argues entirely from that standpoint.

What has before been said here clearly shows the distinction between an action founded upon a statute *creating* a cause of action and a statute granting a right of action upon a cause

already existing, recognized, affirmed, and its payment provided for. The fallacy of the argument is in the premises assumed. In support of plaintiff he cites Bullard vs. Bell. There the action appears to have been upon a "debt created by statute." Such is not the case here. Here the statute had nothing to do with the creation of the debt. This debt rests upon a private contract entered into with one Knapp in 1883. Pursuing this false hypothesis, set up to avoid the bar of the statute, he attempts to show that this obligation against Blaine is a "specialty." He insists that this is "a legislative debt," "a new obligation on Blaine county;" he calls it "the new debt," "a specialty," and says "the debt was renewed," etc

There is little room for controversy as to what this thing is which his action must be based upon. If he has an action at all, it is not upon a new debt, nor a legislative debt, nor a new obligation, nor upon a specialty, nor a novation. It is the old debt of Alturas county. That county being dissolved, a new payor is created to discharge the obligation just as Alturas had it and left it.

Plaintiff specially urges two points in avoidance of the statute:

1st. Because, by the Acts creating Blaine county, the debt was renewed and legislated upon Blaine county; and

2nd. Because neither Alturas nor Blaine has ever levied any tax, or in any manner raised any fund applicable to the payment of the debt.

As to the first point, the facts are not with him, and a slight examination of his citations shows that they are not applicable. Bullard vs. Bell seems to have been a question as to the right to maintain an action for debt upon a duty imposed by a statute, where the statute enjoining the duty fails to prescribe a mode of enforcing it. It seems, also, to involve the question whether the statutory obligation was, in legal effect, the same as a promise to perform it. Here there is no question of that kind. We need not inquire whether an action for debt would lie directly on the statutory duty, because the statute imposing it upon us gave at the same time a right of action and limited the plaintiff's rights to that. It prescribed the plaintiff's mode of recovery and left him no other. It was ample, and in no way changed his status with respect to the obligation held by him. Neither need plaintiff hunt for a promise or a legal substitute for one. If our statute did not contain section 8 the cases might be thought similar in this particular; but in view of that section there is no possible application of this case.

The case of Van Hook vs. Whitlock is subject apparently to the same criticism. The question seems to have been whether an action for debt could be maintained upon a statutory requirement to pay money if the statute imposing the obligation is silent as to the means of enforcing the obligation. I understand the purpose of citing these cases is only to show the nature of the defendant's liability to plaintiff,

and to fix its birth. The plaintiff's right of recovery and mode of recovery being fixed, the nature of the liability need not be inquired into to determine how the plaintiff could enforce his rights. Neither need the date of birth of Blaine county's liability be fixed, for if the liability of Blaine county is upon a cause of action which had already accrued when this liability was laid upon it, as I believe I have conclusively shown, that date is not a factor in this problem, and the two cases cited need no further discussion.

The case of Underhill vs. Sonora was an action to recover on certain city bonds dated March 25th, 1853, payable two years after date. It is to be presumed they were legally issued because no point is made on the want of authority in the city to utter them. Suit was commenced April 5th, 1860. The city pleaded the statute of limitations. Plaintiff contended that the statute had been repealed as to these bonds by two special Acts of the legislature, one of March 9th, 1855, which directed the city to levy a tax of one per cent. semi-annually for three years, for the purpose of paying the debt; and if then the debt was not paid to levy a sufficient tax, in addition to the one per cent., to pay it. It appears that the debt was not then paid, and a second Act was passed March 29th, 1858, in the same words, except that six years are specified instead of three. The Court holds that this is not only a recognition of this debt, but a provision for its payment. That the levy of the tax was a public duty, and carried with it a legal obligation to discharge that duty; and that it

might have been enforced by appropriate proceedings — evidently meaning by mandamus. *That it afforded a remedy to the bondholder for the enforcement of the claim as a valid money obligation.* That as the city assented to the legislative recognition of the debt and provision for payment (and incidentally that this assent made no difference), it was equivalent to the city itself doing them as its own acts. The Court further says: "It is equivalent to a trust deed by the city, setting apart property out of which the money due was to be paid *at a given time if not sooner paid.*" The decision says further, "this is enough to withdraw the case" (not the obligation as such) "from the operation of the statute," * * * "and we cannot conceive of any principle * * * which would hold the claim to be barred by the statute merely because the creditor waited *after this* for his money." After what? Clearly after the legislative recognition and provision. As was said by the Court, the bondholder had his remedy all the time by forcing the city to levy the tax; but because he waited until the tax money was raised or the city failed to raise it as it was directed to do, and then sued within the period of the statute, his recovery was not barred. He did sue within the period of the statute, dating its running from the time when the money was to be raised, which was three years anyway (or more as might result) after March, 1853, which would bring him to March, 1856, under the first Act; and under the second Act, six years more, which would bring him to 1862. So the statute of

four years would not run until 1866. The defendant contended that the statute commenced to run at once when the bonds fell due in March, 1855; and so it would, if the city had been required to provide funds for payment by tax levy on the date the bonds fell due (and that date had not been afterwards changed and postponed) as was the case with Alturas respecting the bonds sued on here.

The fact that there was provision made for payment at a certain time is the turning point in this case, and the conclusion is based solely upon it. The time of provision for payment is the time the statute begins to run.

Of course the statute did not begin to run until that time was reached, for notwithstanding the creditor might have proceeded by mandamus to enforce payment, it was his privilege under these special Acts to wait for the city to act without being forced, if he desired, because of the extension of time made in the provisions for payment, which the creditor elected to accept and to make part of his contract. It is true that the opinion does not specifically decide that the statute would *ever* run, but from the reason given for the decision it is manifest that, while it did not run from the maturity of the bond, as contended by the city, it would run from the "given time" fixed in the provision for its payment, and but for these special Acts the plaintiff would have been cut off.

This case is in no sense a declaration of a principle, and plaintiff says he cites it to show

that the statute could not begin to run until the legislative debt was created. If it has any application to this case it means that the statute would never run in this case; because if the statute did not begin to run when the Alturas bonds fell due nothing has occurred which, within the scope and meaning of this decision, would start it. The Acts of the Legislature which created what he styles the legislative debt on Blaine, made no provision for its payment at any time, near or remote. It merely said Blaine shall assume and pay. Within the meaning of this citation, the statute would not begin to run until a fixed time had arrived. This would be never, or until some future legislation fixed it. Provision for payment of these bonds was made in the Act providing for their issuance; and the time for that payment was the date of their maturity. Alturas was directed by that Act to levy a tax for their payment, as they should fall due. I think the case cited is excellent authority in support of defendant's contention that the statute began to run on these bonds when they fell due, as the only provision for their payment ever made fixed the time for payment at that date.

Plaintiff claims that the statute has not run for the reason "that neither the old nor the new county has ever levied a tax to provide for the payment, or in any way provided for payment, etc." As will be seen, Blaine has never been required nor directed to make any levy, and that the duty of levying a tax upon Alturas accrued

in 1891; and the duty was to levy enough at that time to pay the whole issue. There has been no change nor extension of the time when that duty was to be performed. This was "the given time" mentioned in the Sonora case as applied to this case. The plaintiff waited "after this;" but, in so waiting, he not only waited after the legislative provision but he waited five years after the time fixed by that provision for the performance of the duty enjoined; and did not, as did the plaintiff in the Sonora case, sue within the statutory period after the time fixed had arrived. The Sonora case nowhere shows whether the city levied or refused to levy a tax as directed, but it seems that in the estimation of the Court that would make no difference. The plaintiff could maintain his action within four years after the time of raising the fund had arrived. If there was a trust fund actually raised and in the treasury for the express purpose of paying the debt, the statute would not run; but this is upon entirely different considerations. A trustee of an express trust cannot plead the statute. It was this consideration in Freehill vs. Chamberlain. The action was not against the city of Sacramento (as this is against the county), but against its treasurer to compel him to pay out of moneys in his hands, placed there especially for that purpose; he contended that the coupons sued on were outlawed. By a subsequent Act—a statute passed five years after the Legislature authorized issuing the bonds in question—a board of trustees was cre-

ated for the city, who seem to have diverted the 55 per cent. of certain revenues appropriated into other channels, and no money came to the hands of the treasurer with which he could pay these coupons. At the time the action was was brought, however, the treasurer evidently had funds accruing from this 55 per cent., otherwise under the decision the right to sue him would not have accrued. In any event, the decision is only to this effect: That the city could not divert the funds from their legitimate use and then say that because they were not there when called for the statute had run. Here was an express trust in moneys actually reaching their hands, which, by the terms of the trust, they should have given to the treasurer for the purpose intended.

See cases cited in plaintiff's brief to this point.

The bondholder was therefore helpless because "according to the Act * * * no action could be maintained against the city on these bonds or coupons." If the city violated its duty, or the provision was insufficient, the statute could not begin to run, because not until the money was in the treasury would the bondholder have any right of action under the terms of his contract. In this case the Court further says: "By omitting to perform such duty the city could not create the defense of the statute of limitations;" and this is doubtless the point in the decision claimed by plaintiff as supporting his contention. It does not support it. It fails

because in the same connection the Court, emphasizing the point upon which the case turned, says: "Contrary view would place it in the power of a municipality in many cases to avoid all payment of its debts, because, if by concert of action each officer should omit to perform his duty, the time consumed in compelling each to perform such duty might be made to consume all the period of the statute before the fund would reach the treasury," and that is not "the law applicable to this case." There is no parallel or analogy between this and the case at bar in any particular. Because in the case cited it is evident that any proceeding commenced against any other than the city treasurer—as in mandamus against the trustees or otherwise—would not, in view of the Court, have stopped the running of the statute if it had commenced. For the Court say the whole period might be thus consumed. While in the case at bar it is clear, especially in view of this Sacramento case, that any proceeding and the only proceeding which could be brought—and this is the only one either against Alturas or Blaine which could be brought—would have stopped the running of the statute if it had been brought within five years after the bonds matured.

It is not contended here that the statute would not begin to run until funds were in the treasury to pay the bonds; but only that it did not begin to run until the obligation fell upon Blaine. The difference between the Sacramento case and this lies in the fact that in that case

the only action allowed was, not against the city, but the city treasurer; and the action would not lie against him until he had money with which to pay. It is true, the coupons were due at a fixed date, as are the bonds here; and provision was made for their payment at that date, as is the case here; but in the one case, while the money was raised as provided, it was not used as provided and never reached the destination contemplated, and the bondholder could not therefore reach it by any action allowed him; while here, at the fixed time, no fund was raised at all, when the cause of action against the county accrued. Here there was nothing further provided to be done as there was in both the Sonora and Sacramento cases, and which further provisions in those cases stopped the running of the statute.

Plaintiff further contends that the debt is in a position analagous to that imposed upon a trustee of an express trust, *by reason of its duty to levy the tax, etc.* His citations are not in support of this assumption, but are to the point that the statute does not run in favor of trustees of express trusts. That such is the law is not disputed. But that there is any trust or trustee or any analogy, as assumed, I deny.

Plaintiff's position on this point is inconsistent with his main view of his case. He admits that the statute was in operation and running when he commenced this action. If he is correct in this particular point, he is wrong in the other; for in this view, the statute not only

did not but never would commence to run. There could be no statute of limitations as against counties in any imaginable case. For if the county failed to comply with the law and raised no funds by taxation, the statute would not run until it did; and if it did raise the funds the statute would not run because the county would be trustee of an express trust. In either case the creditor could wait a thousand years if he chose.

In Sawyer vs. Colgan, cited, the opinion holds in effect that the statute would begin to run at the time the provision for their payment fixes. In this case the date of payment is fixed. Provision is made for payment of the bonds at that time. Like upon any debt founded upon contract, the obligee had his action for recovery *then*. The Acts dissolving Alturas and creating Blaine neither prevented the bringing of the action nor gave plaintiff any privilege of waiting, nor offered him any future provision. No new provision *was made*. No diversion of funds occurred. No new contract was erected. Blaine's duty was to pay the same sum, at the same time, in the same manner, without change of conditions or provisions.

That this was the legislative intent is clear from the fact that the direction to levy the tax for payment was not even re-enacted. It was left where it was found. It was the original contract, unchanged and unaffected in any manner. The cases cited by plaintiff serve but to illustrate the defendant's contention that the

statute runs from the maturity of the debt sued on.

Every case cited by him involves special facts of occurrence subsequent to the contract; upon which special facts, in every instance, the decision against the plea of the statute rests.

To hold that the statute has not run here is tantamount to holding that it would never run against Alturas. If a tax is *not* levied it does not run until it is. If it *is* levied it does not run as against the trust fund then raised. It would be to hold that the statute does does not run as against municipal debts at all.

The plaintiff does not claim so much, but his argument upon what he does claim, if sound, leads to this as inevitable.

All the matters set up by plaintiff, including all legislation on the subject, which he dominates "history of the indebtedness," is surplusage. Nothing was done and nothing could be done which would change the relation of Alturas to its creditors or impair the obligation of its contracts. Until Blaine was created, Alturas was all the time alive and subject to actions for the recovery of demands against it. The "history" of the debt is told in the allegation of the issuance of these bonds, and the recital of the statute allowing it.

Many citations are given showing that trust funds and trustees are excluded from the operation of the statute. With this there is no contention; but plaintiff cites no case which warrants a conclusion that any trust relation resulted

from the facts of this case. There was never any property set apart for the payment of this debt, nor was a fund ever created. Never but once was provision made for payment—the provision of a tax to pay them all when due. No apportionment ever made or attempted dealt with this debt apart from the rest; but they all dealt with the aggregate debts, particularising none. To say that a trust relation grew out of these matters and thus stopped the running of the statute is to say that the statute would not run upon any debt of Alturas whatever; for if there was such a trust it applied to every item of debt of every kind. To say this is to say that the statute could not be pleaded to any claim against Alturas at any time, however remote from its maturity. To say that because Lincoln and other counties are to make contribution to be used in the payment of the entire debt, a sacred fund is thus created for the payment of this and other items of debt, is to say that Blaine could not be heard to defend against any claim against Alturas. The facts relating to this contribution are that the counties cut off must pay Blaine certain sums to be used in payment of the whole debt generally, and not for other purposes. Blaine is not relieved from liability, but must pay, with or without contribution. Even if the contributions had been made (and they have not) Blaine is not made a trustee, but uses her own money to pay her own debts. Her liability is in no way altered by the fact that she is to be thus aided. And if the funds so to be re-

ceived *are* trust funds, the statute had run upon the demand before the fund was created at all. Does counsel pretend that these Acts requiring contribution stopped the running of the statute which began in 1891? His contention involves it. Does he also contend that Blaine shall keep this trust fund (not yet received) for the eight years and pay him now out of other moneys?

If this money is sacred for the payment of this debt, how can he get his pay until this sacred money is received? Can he get this sacred money (less than fifty per cent. of his demand) and no more? Has the statute not run on this and has run on that part of the debt for which there is to be no contribution? The proposition argues itself *ad absurdum*, and leads to the conclusion, besides, that his cause of action has not even yet accrued.

All that plaintiff says concerning delays which would accompany a mandamus proceeding commenced in 1891, apply as well to the present case. By it he also concedes that he had an action then. If he had, why has not the statute run? Mandamus would have compelled levy of a tax and payment.

In discussing the opinion of the trial Court, plaintiff says he knows of no instance in this District where provision like this was made for payment. In every instance cited by him the provision was exactly like this, by a tax directed to be laid or moneys from specified sources so applied. The Capitol building fund was realized from license taxes, specially appropriated. The

others were from State funds levied by the respective counties. It was not necessary to plaintiff's relief to mandamus the treasurer. In the instances cited the creditor could sue to recover when the debt fell due by proceeding against the proper officers. So he could here, by mandamus against the county board to levy a tax, or he could have sued the county direct for judgment (as was in fact done in four separate suits which have gone to judgment on this same issue of bonds), before the statute run.

In claiming an acknowledgment of this liability by Blaine, plaintiff is disingenuous, to say the least. Section 4078 Idaho statutes, reads: "No acknowledgment or promise is sufficient evidence of a new or continuing contract by which to take the case out of the operation of this title, unless the same is contained in some writing signed by the party to be charged thereby.

Plaintiff claims that in the action against Lincoln county for the contribution mentioned, the complaint of Blaine was such an acknowledgment. The action was commenced October 18th 1895, more than a year before the statute had run upon these bonds. This defense was not available to Blaine until November 1st 1896. Judgment was rendered in that case only about a month ago; and the period of the statute expired pending the litigation. Plaintiff seeks to induce the belief that Blaine is wilfully attempting to make Lincoln pay it a sum for something upon which it disclaims liability to its creditor.

To have the benefit and deny it to its creditor. If the statute had run then, Lincoln might have pleaded the statute on these bonds and refused to contribute pro tanto; for they would not then have been an enforcible indebtedness. Although, as the contribution was rated upon the debt as it was on March 18th, 1895, this right would have been denied and probably refused. It was enforcible against Blaine when that suit was brought. The plaintiff still had his right of action unaffected by the statute. Besides it is not true that the whole claim for contribution was recovered, as plaintiff states. The recovery was more than $20,000 less than claimed. But if it were all recovered, Blaine would not thereby be precluded of its right to plead the statute if the plaintiff failed and neglected to pursue his remedy in time, Blaine not having waived the statute.

As a matter of fact, Blaine has never recovered the contribution at all nor has it ever, since the statute run, acknowledged this as an enforcible debt; nor has any one done so for it. No doubt the legislature at various times recognised the Alturas debts, but it at no time made a new promise or acknowledged a continuing contract. It only provided for the fulfillment of Alturas' promises by another as Alturas was required to fulfil them It shows no intention in any of the Acts to do anything more than to preserve to Alturas' creditors all the rights they had as against Alturas when the debts were first created.

Much good law has been cited to support an assumption that this cause of action is different from what it is. The facts, however, cannot be changed to meet the plaintiff's necessities. The debt is a debt arising on contract. The defendant assumed the obligation of the original obligor. Became the payor of the bonds. Not a trustee of funds set apart to pay, but a payor exactly as Alturas was a payor, neither more nor less. A substitute, not by novation, because a novation would extinguish, *per se*, the original debt. This debt was expressly continued as it was. The authorities cited support a theory based entirely upon false premises; and beyond those analysed above, they do not have even the appearance of application to the facts as they are. The complaint is at variance with this theory and the demurrer is to that and not to plaintiff's argument.

It is admitted that except for what plaintiff urges in his brief, the statute runs here the same as in any case, and I therefore deem it unnecessary to cite authority as to the operation of the statute. If I have succeeded in exposing the fallacy of that which is urged against defendant's plea of the statute, I have accomplished the only purpose which a brief could serve in this argument.

LYTTLETON PRICE,
For Defendant in Error.